IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11405 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVANBHAI KHEMCHANDBHAI THAKKA

Versus

COMMISSIONE ROF POLICE

Appearance:

1. Special Civil Application No. 11405 of 2002

MS BANNA S DUTTA for Petitioner No. 1

MS NV JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner detenu has challenged the order of detention dated 30/10/02 by which he is detained as a bootlegger under PASA. In the

grounds of detention of the same date there is a reference about two criminal cases. Both the said cases are filed against the petitioner under the Bombay Prohibition Act.

On behalf of the petitioner, it is submitted that at the relevant point of time, when the detention order was passed, the petitioner was already in judicial custody. It is submitted that the detaining authority has not properly stated as to why it was necessary to detain the petitioner under preventive detention even though he is already in judicial custody.

The learned advocate for the petitioner submits that at the relevant time the petitioner was already in judicial custody still he has been detained under preventive detention. It is submitted that the detaining auhority has not considered as to why it is still necessary to detain the petitioner even though he is in judicial custody. It is submitted that the detaining authority has merely stated that the petitioner may be released on bail at any point of time. However, the detaining authority has not stated as to on what material it has reached the conclusion that the petitioner may be released on bail at any point of time. The detaining authority has not stated anything about any such material that on what basis it has reached the said conclusion. In above view of the matter, the order of detention is required to be quashed and set aside and it is accordingly set aside, as the authority has not stated as to on what material it has reached the said conclusion about the petitioners likelihood of getting bail.

The petition is accordingly allowed. The detention order is ordered to be quashed and set aside and it is accordingly set aside. The detenu - Jivanbhai Khemchandbhai Thakkar is ordered to be released forthwith, if he is not required in connection with any other case. Rule is accordingly made absolute.

(P. B. Majmudar,J.)

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